

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
|-----------------|-------------|----------------------|---------------------|

08/804,900 02/24/97 MECHALEY

R 06318/005001

WM01/1227

EXAMINER

GARY A WALPERT
FISH & RICHARDSON
225 FRANKLIN STREET
BOSTON MA 02110-2804

POINVIL, F

ART UNIT

PAPER NUMBER

2164

DATE MAILED:

12/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/804,900

Applicant(s)

Mechaley et al.

Examiner

Frantzy Poinvil

Group Art Unit

2164



Responsive to communication(s) filed on Oct 10, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

Claim(s) 1-27 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-27 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2164

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 18-20 and 22-27 remain rejected under 35 U.S.C. 103(a) as being unpatentable over "NSP to install wireless network meter reading system will consolidate its data collection by installing network meter system (hereinafter "NSP) considered with Meyers "CDMA gets its day in the sun", hereinafter "CDMA" as set forth in the prior Office action.

Applicant's representative argues that a person of ordinary skill in the art at the time of the invention would not have been motivated to combine the references because the CDMA reference is directed to an upgrade from an analog system to a digital system and the NSP reference has no relevance to a digital system and that the NSP reference states retrofitting customers' existing electric and gas meters with radio transmitters.

In response, the Examiner respectfully disagrees with applicant's interpretation. The CDMA reference has not been applied to denote teachings of a conversion principle from an analog system to a digital system. In fact the system being converted from an analog to a digital should not be the focus of discussion. What should be discussed is the motivation as to why the system discussed in the CDMA is being converted from analog to a digital system. Clearly, the

Art Unit: 2164

reference indicates that "an operator will hand-pick several hundred existing customers based on their usage patterns and offer them CDMA upgrades". To discover customers' usage patterns, a prior analysis of customers data would have been collected and analyzed. Also, criteria for choosing which customers to pick would have to be established and met by the collected data. Customers are not randomly chosen. Thus, the motivation behind the conversion is for better services, upgrades and for enhancing customer satisfaction using a particular product/service.

The NSP reference discusses analyzing customers' energy consumption so as to "determine which additional value-added products and services to offer its customers". Attention is directed to page 1 of the reference. The reference also clearly indicates that "The ultimate objective is to continue to provide customers the highest value for their energy dollar". In the process for implementing this objective, data about customers' usage on utilities such as electricity and gas are collected and analyzed so as to examine specific information about customers' energy usage, thereby denoting a pattern about how customers are consuming energy. Note page 1 of the reference.

Thus, one of ordinary skill in the art would have found it obvious to combine these two teachings because they both evaluate collected customer's consumption of a particular product/service and a usage pattern is identified. Then, offers for better services and upgrades are made and/or recommended to the customers.

Art Unit: 2164

Applicant has amended their independent claims to recite the collected data are “automatically analyzed” and then argues that an automatic analysis is not present in the combined references.

In response, the references taken alone or in combination are computerized systems. The Examiner found it unrealistic for a skilled artisan to abandon a computerized system found in the references to adopt a manual analysis of the collected data. This would result in an abundantly exhausted amount of time which would have ultimately produced inaccurate results. The skilled artisan would have adhered to the computerized system and a more accurate result using an automatic analysis of the collected data would have produced.

Applicant also argues that the NSP reference is silent as to how these data are analyzed.

In response, applicant's independent claims are also silent as to how the collected data are analyzed. In most analysis, the Examiner takes Official Notice that criteria must be set, limits have to be established and/or deterministic values would be set. It would have been obvious to the skilled artisan that a similar notation would have been applied in the combined teachings when determining usage patterns and offers to recommend customers based on their usage patterns.

Applicant's representative then argues the application of a fuzzy algorithm is not merely a design choice since neither reference teaches the step of analyzing automatically.

In response, fuzzy logics have been known in the art for determining the degree of truthfulness or falsehood of variables. Using fuzzy logic in the combined teachings above would

Art Unit: 2164

have bee obvious to the skilled artisan in order to account for desirable and tolerance values of the variables.

3. Claim 11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over “NSP to install wireless network meter reading system will consolidate its data collection by installing wireless network meter system” (herein after “NSP”) considered with Meyers, “CDMA gets its day in the sun”, herein after “CDMA” as applied to claim 1 above, and further in view of Blau (US Patent No. 5,634,101) as set forth in the prior Office action.

Applicant’s representative then argues that Blau is silent as to a method of determining when to offer greater functionality to a user based upon at least group user data and decision as claimed in claim 11.

In response, the prior Office action does not indicate that Blau teaches “determining when to offer greater functionality to a user based upon at least group used data and decisions”. The Examiner had directed applicant’s to the rejection of independent claim 1. Moreover, in most surveys, users or consumers are being classified by different demographics or psychographics criteria. Users in a particular class or group are usually treated the same. Employing this well known process in the combined teachings above would have been obvious to the skilled artisan in order to offer users meeting a particular pattern with the same offer thus maintaining a fair system.

4. Claims 12-13, 15-17 and 21 remain rejected under 35 U.S.C. 103(a) as being unpatentable over “NSP to install wireless network meter reading system will consolidate its data

Art Unit: 2164

collection by installing wireless network meter system" (herein after "NSP") considered with Meyers, "CDMA gets its day in the sun", herein after "CDMA", as applied to claims 1 and 18 above, and further in view of Thompson et al (US Patent No. 5,335,276) as set forth in the prior Office action.

Applicant's representative then argues that the addition of Thompson et al to the NSP and CDMA references does not fill the gap to render the claims obvious because Thompson et al merely teaches a communication and that Thompson et al fails to teach the analyzing automatically and communicating to a user of the personal assistant system an availability of the greater functionality when at least one data pattern has been identified.

In response, the combination of NSP and CDMA teaches communicating data back to the consumers for possible offers. Additionally, see the prior rejection of claim 11.

Applicant's representative then argues that Thompson et al fails to teach user interaction with the production function... and communicating to a user of the personal assistant system and availability of the greater functionality.

In response, the combined teachings of NSP and CDMA teaches communicating offers to a consumer. Depending on the product/service, offers would have included interactivities with the product or upgrades of the product.

A user would not be willing to switch if there was no greater functionality. CDMA also states that offers for upgrades are provided to customers based on usage patterns of the same product, not for a completely digital based product as asserted by applicant's representative.

Art Unit: 2164

Applicant's representative then argues that Blau is silent as to determining when offer greater functionality to a user based upon at least group user data and decision data.

In response, the prior Office action does not indicate that Blau teaches "determining when to offer greater functionality to a user based upon at least group use data and decisions". The Examiner had directed applicant's to the rejection of independent claim 1. Moreover, in most surveys, users or consumers are being classified by different demographics or psychographics criteria. Users in a particular class or group are usually treated the same. Employing this well known process in the combined teachings above would have been obvious to the skilled artisan in order to offer users meeting a particular pattern with the same offer thus maintaining a fair system.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2164

6.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil, whose telephone number is (703) 305-9779. The examiner can normally be reached on Monday through Thursday from 7:30 AM to 6:00 PM.

The fax phone number for this Art Unit is (703) 305-0040.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

FP

20Dec00


Frantzy Poinvil
Primary Examiner
Art Unit 2164